

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Rafael Arroyo, Jr.,

Plaintiff,

v.

Jerry Voukelatos; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Rafael Arroyo, Jr. complains of Jerry Voukelatos; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility.

2. Defendant Jerry Voukelatos owned Husky Boy located at or about 2717 W. McFadden Avenue, Santa Ana, California, in February 2019.

3. Defendant Jerry Voukelatos owns Husky Boy ("Restaurant") located at or about 2717 W. McFadden Avenue, Santa Ana, California, currently.

1 4. Plaintiff does not know the true names of Defendants, their business
2 capacities, their ownership connection to the property and business, or their
3 relative responsibilities in causing the access violations herein complained of,
4 and alleges a joint venture and common enterprise by all such Defendants.
5 Plaintiff is informed and believes that each of the Defendants herein,
6 including Does 1 through 10, inclusive, is responsible in some capacity for the
7 events herein alleged, or is a necessary party for obtaining appropriate relief.
8 Plaintiff will seek leave to amend when the true names, capacities,
9 connections, and responsibilities of the Defendants and Does 1 through 10,
10 inclusive, are ascertained.

11
12 **JURISDICTION & VENUE:**

13 5. The Court has subject matter jurisdiction over the action pursuant to 28
14 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
15 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16 6. Pursuant to supplemental jurisdiction, an attendant and related cause
17 of action, arising from the same nucleus of operative facts and arising out of
18 the same transactions, is also brought under California's Unruh Civil Rights
19 Act, which act expressly incorporates the Americans with Disabilities Act.

20 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
21 founded on the fact that the real property which is the subject of this action is
22 located in this district and that Plaintiff's cause of action arose in this district.

23
24 **FACTUAL ALLEGATIONS:**

25 8. Plaintiff went to the Restaurant in February 2019 with the intention to
26 avail himself of its goods or services, motivated in part to determine if the
27 defendants comply with the disability access laws.

28 9. The Restaurant is a facility open to the public, a place of public

1 accommodation, and a business establishment.

2 10. Parking spaces are one of the facilities, privileges, and advantages
3 offered by Defendants to patrons of the Restaurant.

4 11. Unfortunately, even though there was a parking space marked and
5 reserved for persons with disabilities in the parking lot serving the Restaurant
6 during Plaintiff's visit, the parking space was not van accessible.

7 12. The parking stall measured about 111 inches in width while the access
8 aisle measured about 56 inches in width. This is not van accessible.

9 13. On information and belief, Plaintiff alleges that the defendants once
10 had van parking space marked and reserved for persons with disabilities at the
11 Restaurant. Unfortunately, the van parking space was allowed to fade or get
12 paved over.

13 14. In addition to not having a van-accessible parking space for persons with
14 disabilities, the parking stall and access aisle were not level with each other.
15 The parking stall and access aisle had inaccessible slopes that exceeded 2.1%.

16 15. Finally, there was no "NO PARKING" warning in the access aisle.

17 16. Currently, there is no van-accessible parking space.

18 17. Currently, the parking stall and access aisle are not level with each other.

19 18. Currently, there is no "NO PARKING" warning in the access aisle.

20 19. Finally, there was an insufficient number of parking spaces marked and
21 reserved for persons with disabilities. There were approximately 33 parking
22 spaces in the parking lot of the Restaurant but only one space was reserved for
23 persons with disabilities. There should have been two parking spaces marked
24 and reserved for persons with disabilities.

25 20. Plaintiff personally encountered these barriers.

26 21. This inaccessible facility denied the plaintiff full and equal access and
27 caused him difficulty.

28 22. Paths of travel are another one of the facilities, privileges, and

1 advantages offered by Defendants to patrons of the Restaurant.

2 23. Meanwhile, and even though the plaintiff did not complain about the
3 barrier, the ramp near the Restaurant entrance has cross slopes that are above
4 2.1%.

5 24. Defendants have failed to maintain in operable working condition those
6 features of facilities and equipment that are required to be readily accessible to
7 and usable by persons with disabilities at the Subject Property.

8 25. The defendants have failed to maintain in working and useable
9 conditions those features required to provide ready access to persons with
10 disabilities.

11 26. The barriers identified above are easily removed without much
12 difficulty or expense. They are the types of barriers identified by the
13 Department of Justice as presumably readily achievable to remove and, in fact,
14 these barriers are readily achievable to remove. Moreover, there are numerous
15 alternative accommodations that could be made to provide a greater level of
16 access if complete removal were not achievable.

17 27. For example, there are numerous paint/stripe companies that will come
18 and stripe a level, van-accessible parking stall and access aisle and install
19 proper signage on rapid notice, with very modest expense, sometimes as low
20 as \$300 in full compliance with federal and state access standards.

21 28. Plaintiff will return to the Restaurant to avail himself of its goods or
22 services and to determine compliance with the disability access laws. He is
23 currently deterred from doing so because of his knowledge of the existing
24 barriers. If the barriers are not removed, the plaintiff will face unlawful and
25 discriminatory barriers again.

26 29. Given the obvious and blatant nature of the violations and barriers
27 alleged herein, the plaintiff alleges, on information and belief, that there are
28 other violations and barriers on the site that relate to his disability. Plaintiff will

1 amend the Complaint to provide proper notice regarding the scope of this
 2 lawsuit once he conducts a site inspection. However, please be on notice that
 3 the plaintiff seeks to have all barriers related to his disability remedied. See
 4 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 5 encounters one barrier at a site, he can sue to have all barriers that relate to his
 6 disability removed regardless of whether he personally encountered them).

7
 8 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 9 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 10 Defendants.) (42 U.S.C. section 12101, et seq.)

11 30. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 12 again herein, the allegations contained in all prior paragraphs of this
 13 complaint.

14 31. Under the ADA, it is an act of discrimination to fail to ensure that the
 15 privileges, advantages, accommodations, facilities, goods and services of any
 16 place of public accommodation is offered on a full and equal basis by anyone
 17 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 18 § 12182(a). Discrimination is defined, inter alia, as follows:

- 19 a. A failure to make reasonable modifications in policies, practices,
 20 or procedures, when such modifications are necessary to afford
 21 goods, services, facilities, privileges, advantages, or
 22 accommodations to individuals with disabilities, unless the
 23 accommodation would work a fundamental alteration of those
 24 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 25 b. A failure to remove architectural barriers where such removal is
 26 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 27 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 28 Appendix "D."

1 c. A failure to make alterations in such a manner that, to the
2 maximum extent feasible, the altered portions of the facility are
3 readily accessible to and usable by individuals with disabilities,
4 including individuals who use wheelchairs or to ensure that, to the
5 maximum extent feasible, the path of travel to the altered area and
6 the bathrooms, telephones, and drinking fountains serving the
7 altered area, are readily accessible to and usable by individuals
8 with disabilities. 42 U.S.C. § 12183(a)(2).

9 32. Any business that provides parking spaces must provide accessible
10 parking spaces. 2010 Standards § 208. Under the 2010 Standards, one in
11 every six accessible parking spaces must be van accessible. 2010 Standards §
12 208.2.4.

13 33. Here, the lack of a van parking space is a violation of the law.

14 34. Under the 2010 Standards, access aisles shall be at the same level as the
15 parking spaces they serve. Changes in level are not permitted. 2010 Standards
16 502.4. "Access aisle are required to be nearly level in all directions to provide
17 a surface for wheelchair transfer to and from vehicles." 2010 Standards §
18 502.4 Advisory. No more than a 1:48 slope is permitted. 2010 Standards §
19 502.4.

20 35. Here, the failure to provide level parking stall is a violation of the law.

21 36. Any business that provides parking spaces must provide a sufficient
22 number of handicap parking spaces. 2010 Standards § 208. Under the 2010
23 Standards, a parking lot with 33 spaces must have 2 accessible spaces. 2010
24 Standards § 208.2 and 1 of them must be van accessible. *Id.* at 208.2.4.

25 37. Here, there was only one parking space reserved for persons with
26 disabilities and it was not van accessible.

27 38. Nowhere shall the cross slope of an accessible route exceed 2.1%. 2010
28 Standards § 403.3.

1 39. Here, the slopes near the Restaurant entrance exceeded the levels
2 allowed by law.

3 40. The Safe Harbor provisions of the 2010 Standards are not applicable
4 here because the conditions challenged in this lawsuit do not comply with the
5 1991 Standards.

6 41. A public accommodation must maintain in operable working condition
7 those features of its facilities and equipment that are required to be readily
8 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

9 42. Here, the failure to ensure that the accessible facilities were available
10 and ready to be used by the plaintiff is a violation of the law.

11
12 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
13 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
14 Code § 51-53.)

15 43. Plaintiff repleads and incorporates by reference, as if fully set forth
16 again herein, the allegations contained in all prior paragraphs of this
17 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
18 that persons with disabilities are entitled to full and equal accommodations,
19 advantages, facilities, privileges, or services in all business establishment of
20 every kind whatsoever within the jurisdiction of the State of California. Cal.
21 Civ. Code §51(b).

22 44. The Unruh Act provides that a violation of the ADA is a violation of the
23 Unruh Act. Cal. Civ. Code, § 51(f).

24 45. Defendants’ acts and omissions, as herein alleged, have violated the
25 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
26 rights to full and equal use of the accommodations, advantages, facilities,
27 privileges, or services offered.

28 46. Because the violation of the Unruh Civil Rights Act resulted in difficulty,

1 discomfort or embarrassment for the plaintiff, the defendants are also each
2 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
3 (c).)

4
5 **PRAYER:**

6 Wherefore, Plaintiff prays that this Court award damages and provide
7 relief as follows:

8 1. For injunctive relief, compelling Defendants to comply with the
9 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
10 plaintiff is not invoking section 55 of the California Civil Code and is not
11 seeking injunctive relief under the Disabled Persons Act at all.

12 2. Damages under the Unruh Civil Rights Act, which provides for actual
13 damages and a statutory minimum of \$4,000.

14 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
15 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

16
17 Dated: February 11, 2019

CENTER FOR DISABILITY ACCESS

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20 By:

21 Chris Carson, Esq.
22 Attorney for plaintiff
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